

REMARKS

This communication is in response to the Office Action of February 9, 2007 in which claim 22 is rejected.

Claim 22 is amended to incorporate limitation of claim 23. Claim 23 is cancelled. The applicant understanding is that 35 USC 112 and 102(b) rejections are no longer applied as stated in the present Office Action on pages 2 and 3.

Claims 22-24 was rejected under 35 U.S.C. 103 (a) as being unpatentable over Hiroshi (JP 11-342202; 12/14/99) in view of Katano et al (JP 10278982; 10/20/97). The reconsideration is requested because the Office has failed to properly use the MPEP Paragraph 2143 to establish a *prima facie* case of obviousness.

In the present office action the Examiner admits that Hiroshi et al do not teach that "a ratio of an injection time to a stop time is set to 0.1 to 2.0, when a valve is opened, in order to obtain a sufficient yet not excessive cooling and/or massage effect on the skin". Also the Examiner admits that Hiroshi et al do not teach that "wherein the product contains 0.1 to 5% by weight of a compressed gas in an aerosol composition" or "the product contains 20 to 70 % by weight of a liquefied gas in an aerosol composition", as recited in claims 22-24 of the present patent application.

The Examiner alleges that Katano et al teach these limitations. The applicant disagrees.

The applicant did not find any disclosure by Katano et al of limitations from claims 22 and 24 as quoted above,

contrary to what is alleged by the Examiner. The Examiner did not indicate where in Katano et al he found those limitations. Then the burden of proof is on the USPTO to prove that Katano et al contain limitations recited in claims 22 and 24 of the present invention. Thus, the Office did not show that references quoted by the Examiner teach all limitations of claims 22 and 24 as required by the MPEP Paragraph 2143.

Moreover, the Examiner did not present any arguments about justification (e.g., motivation) and probability of success for combining quoted references (assuming for sake of argument only that quoted references teach or suggests all the limitations of independent claims 22 and 24) as also required by MPEP Paragraph 2143.

Therefore, the applicant request to withdraw rejection of claims 22 and 24 as being unpatentable under 35 U.S.C. 103(a) over Hiroshi in view of Katano et al.

The objections and rejections of the Office Action of July 8, 2008 having been obviated by amendment or shown to be inapplicable, withdrawal thereof is requested and passage of all claims to issue is solicited.

Respectfully submitted,



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